

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES A. RUSSELL,

Petitioner,

Case No. 3:15cv331

vs

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

JASON BUNTING, Warden,
Warren Correctional Institution

Respondent,

ENTRY AND ORDER OVERRULING RESPONDENT'S OBJECTIONS (DOC. 56) TO MAGISTRATE JUDGE MICHAEL R MERZ'S SUPPLEMENTAL SUBSTITUTED REPORT AND RECOMMENDATION (DOC. 55) AND THE OBJECTIONS (DOC. 52) TO THE SUBSTITUTED REPORT AND RECOMMENDATION ON REMAND (DOC. 49) AS AMENDED (51); ADOPTING IN THEIR ENTIRETY THE SUBSTITUTED REPORT AND RECOMMENDATION AS AMENDED (DOCS. 49 & 51) AND THE SUPPLEMENTAL SUBSTITUTED REPORT AND RECOMMENDATIONS (DOC. 55); ORDERING A WRIT OF HABEAS CORPUS CONDITIONED ON PETITIONER BEING ALLOWED A NEW APPEAL TO THE OHIO SECOND DISTRICT COURT OF APPEALS WITHIN 180 DAYS OF THIS JUDGMENT IN WHICH THE ASSIGNMENT OF ERROR AT ISSUE-WHETHER PETITIONER'S AGGRAVATED ROBBERY AND AGGRAVATED MURDER CONVICTIONS SHOULD BE MERGED UNDER OHIO REVISED CODE 2941.25 - IS PRESENTED FOR DECISION.

This a habeas corpus case under 28 U.S.C. 2254. On 7/27/18, Magistrate Judge Michael R. Merz filed a Substituted Report and Recommendations (Doc. 49), recommending Petitioner's Petition for Writ of Habeas Corpus be granted conditionally. Said Substituted Report and Recommendation was amended by court order on 7/30/18 (Doc. 51). In response Respondent filed Objections (Doc. 52) to said Substituted Report and Recommendations on Remand, as

amended. This Court recommitted the case to the Magistrate Judge for reconsideration in light of those Objections. On 11/13/18 Magistrate Judge Merz filed a Supplemental Substituted Report and Recommendations, on remand (Doc. 55) again recommending Petitioner's Petition for Writ of Habeas Corpus be conditionally granted. Respondent again filed Objections (Doc. 56) to the Magistrate Judge's Supplemental Substituted Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge in both Substituted and Supplemental Substituted Reports and Recommendations (Doc. 49 as amended and 55) as well as the Respondent's Objections (Doc 52 & 56) to those Reports and Recommendations. Pursuant to 28 U.S.C. 636(b) and Fed. R. Civ. 72(b) this District Judge has made a *de novo* review of the record in this case and upon consideration of the foregoing, the Court finds the Objections (Doc. 52 & 56) are not well taken and hereby **OVERRULED**.

THEREFORE, the Court adopts the Magistrate Judge's Substituted Report and Recommendations, as amended (Doc. 49), and Supplemental Substituted Report and Recommendations (Doc. 55) and Orders that Petitioner's Petition for Writ of Habeas Corpus be **GRANTED** on condition that Petitioner be allowed a new appeal within 180 days of this judgement in which the assignment of error at issue - whether petitioner's aggravated robbery and aggravated murder convictions should be merged under Ohio Revised Code 2941. 25 - is presented for decision.

DONE and **ORDERED** this 7th day of January, 2019.

*s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE